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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,263	01/25/2005	Juergen Locffler	10191/3821	7492
26646	7590	10/18/2007		
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			EXAMINER YOUNG, EDWIN	
			ART UNIT 3681	PAPER NUMBER
			NOTIFICATION DATE 10/18/2007	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

uspto@kenyon.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/501,263	<b>Applicant(s)</b> LOEFFLER ET AL.	
	<b>Examiner</b> Edwin A. Young	<b>Art Unit</b> 3681	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 11, 12 and 15-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11, 12, 15-21, 23 and 24 is/are rejected.
- 7) ☒ Claim(s) 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 December 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114 was filed in this application after appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal. Since this application is eligible for continued examination under 37 CFR 1.114 and the fee set forth in 37 CFR 1.17(e) has been timely paid, the appeal has been withdrawn pursuant to 37 CFR 1.114 and prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on 9/18/2007 has been entered.

### ***Claim Objections***

Claim 23 is objected to because of the following informalities: line 3, "drive,, wherein" should be changed to - -drive, wherein- -. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11, 12, 15-21, 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over TABATA et al. (EP 1160119 A1) in view of BOHM et al. (US 6,457,784).

Regarding claim 11, TABATA et al. discloses a method for controlling a hybrid drive of a vehicle (see Fig. 1), the hybrid drive including as propulsion motors an internal

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combustion engine (10) and at least one electric motor/generator (20), and output shafts (12 and 13) of the propulsion motors being operatively linkable to a power train (30) of the vehicle, the method comprising activating the propulsion motors and a braking system of the vehicle in a coordinated manner, as a function of a negative torque demand, and taking the negative torque demand into account, wherein to specify a setpoint wheel braking torque, an instantaneous transmission output torque signal is gated with a request signal of a brake pedal, and wherein the request signal of the brake pedal is interpreted within a range that is defined by operation-related state data of the braking system and instantaneous torque or power potentials of the hybrid drive (see page 10, column 18, lines 6-8 and page 15, column 28, lines 26-40). However, TABATA et al. does not teach the braking system of the vehicle being electrically activated.

BOHM et al. discloses a method for controlling the braking torque of an electric vehicle (see Abstract) wherein an electrically activated braking system is used (see column 4, lines 38-49 and column 5, lines 20-35).

Regarding claim 11, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide the braking system of TABATA et al. with an electrically activated one, in light of the teachings of BOHM et al., in order to provide individual control of the brakes as taught by BOHM (see column 3, lines 47-56).

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Regarding claim 12, TABATA et al. discloses specifying the setpoint wheel braking torque for the braking system taking an operating state of the hybrid drive into account (see page 15, column 28, lines 35-40).

Regarding claim 15, TABATA et al. discloses operating data of the internal combustion engine and of the electric motor/generator being taken into account for torque and power potentials of the hybrid drive (see page 15, column 28, lines 30-32).

Regarding claim 16, TABATA et al. discloses an operating state of an on-board electrical system being taken into account for a torque and power potential of the electric motor/generator (see page 15, column 28, lines 4-7).

Regarding claim 17, TABATA et al. discloses at least one of a battery state of charge, and a battery voltage being taken into account (see page 15, column 28, lines 4-7).

Regarding claim 18, TABATA et al. discloses possible operating modes of the hybrid drive being taken into account for torque and power potentials (see page 12, column 22, lines 23-36 and page 13, columns 23-24, lines 55-58 and 1-5).

Regarding claim 19, TABATA et al. discloses a selected gear of the transmission being taken into account for torque and power potentials (see page 17, column 32, lines 42-50).

Regarding claim 20, TABATA et al. discloses a shifting state of clutches of the hybrid drive being taken into account for torque and power potentials (see page 26, column 49, lines 39-57).

Regarding claim 21, TABATA et al. as modified by BOHM et al. discloses a request signal delivered by the brake pedal (amount of pedal depression) being processed (converted into an electrical signal) so that a coordinated activation of the propulsion motors and the electrically activatable braking system of the vehicle occurs (see TABATA et al. page 10, column 18, lines 6-8 and page 15, column 28, lines 26-40).

Regarding claim 23, TABATA et al. discloses operating data of the internal combustion engine and of the electric motor/generator being taken into account for torque and power potentials of the hybrid drive (see page 15, column 28, lines 30-32), wherein an operating state of an on-board electrical system being taken into account for a torque and power potential of the electric motor/generator (see page 15, column 28, lines 4-7), and wherein at least one of a battery state of charge, and a battery voltage being taken into account (see page 15, column 28, lines 4-7).

Regarding claim 24, TABATA et al. discloses possible operating modes of the hybrid drive being taken into account for torque and power potentials (see page 12, column 22, lines 23-36 and page 13, columns 23-24, lines 55-58 and 1-5), wherein a selected gear of the transmission being taken into account for torque and power potentials (see page 17, column 32, lines 42-50), and wherein a shifting state of clutches of the hybrid drive being taken into account for torque and power potentials (see page 26, column 49, lines 39-57).

***Allowable Subject Matter***

Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments filed 9/18/2007 have been fully considered but they are not persuasive.

Applicant argues that TABATA et al. and BOHM et al. "do not disclose or suggest the feature in which to specify the setpoint wheel braking torque, an instantaneous transmission output torque signal is gated with a request signal of the brake pedal, and in which the request signal is interpreted within a range that is defined by operation-related state data of the braking system and instantaneous torque or power potentials of the hybrid drive." As mentioned above in the rejection of claim 11, TABATA et al. does disclose the limitations in question, specifically, on page 15, column 28 lines 26-40. TABATA et al. states, "When the driver steps on the brake pedal, the braking force applied to the vehicle is the sum of the power source braking and the wheel braking." Since applicant does not provide a specific definition for the terms "setpoint" and "signal" set forth in claim 11, the broadest reasonable interpretation of the terms will be applied. Therefore, TABATA et al.'s disclosure of summing the power source braking (instantaneous transmission output torque signal) and the wheel braking (signal of a brake pedal) to determine the total braking force (setpoint wheel braking torque) applied to the vehicle is interpreted as meeting claim 11. Furthermore, TABATA et al.'s

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disclosure meets the limitation of claim 11, "wherein a request signal delivered by a brake pedal is interpreted within a range that is defined by operation-related state data of the braking system and instantaneous torque or power potentials of the hybrid drive" (see page 10, column 18 lines 6-8 and page 15, column 28 lines 26-40).

Regarding applicant's argument that neither reference discloses the "request signal delivered by a brake pedal [being] interpreted within a range that is defined by the operation-related state data of the braking system and instantaneous torque or power potentials of the hybrid drive", it is submitted that the combination of TABATA et al. in view of BOHM et al. discloses the claimed subject matter. Specifically, BOHM et al. modifies TABATA et al. to provide an electrically activated braking system (see rejection above). As such, the signal delivered by a brake pedal (see BOHM et al., column 4, lines 38-49 and column 5, lines 20-35) is interpreted within a range that is defined by the operation-related state data of the braking system (amount of brake pedal depression) and instantaneous torque or power potentials of the hybrid drive (see TABATA et al., page 10, column 18, lines 6-8 and page 15, column 28, lines 26-40).

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the signal delivered by the brake pedal can now be processed so that the maximal possible negative torque of the hybrid drive is assigned to the maximal negative torque demand position of the brake pedal...a value is assigned to the minimal negative torque demand position of the brake pedal...the values lying in between will be assigned to corresponding positions of the brake pedal) are not recited in the rejected claim 11.



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Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edwin A. Young whose telephone number is 571-272-4781. The examiner can normally be reached on M-TH 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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